

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1579 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MOHAMMAD ELIAS ABDULMIYA SHAIKH

Versus

POLICE COMMISSIONER BARODA

Appearance:

MS JAYSHREE C BHATT for Petitioner

Mr. Samir Dave, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/10/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. Jayshree Bhatt for the petitioner and learned A.G.P. Mr. Samir Dave for the respondents nos.1, 2 and 3.

1. The detention order dated 15-12-1998 passed by the respondent no.1-Police Commissioner, Baroda City, Baroda, in exercise of powers conferred vide Section 3(1)

of the Gujarat Prevention of Antisocial Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA" and produced at Annexure "E" indicate that three criminal cases under the Prohibition Act were registered against the petitioner on 7-3-1998, 9-6-1998 and 1-9-1998 respectively. That countrymade liquor has been seized from the possession of the petitioner in each of the cases and after due investigation, all the three cases are pending for trial.

The grounds further indicate that three witnesses on assurance of their anonymity have provided information of alleged antisocial activity of the petitioner in respect to incidents dated 28-8-1998, 12-9-1998 and 21-10-1998 respectively.

3. That on the basis of the said material, the respondent no.1 has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That witnesses being afraid of the petitioner have requested to keep their names and addresses secret, and as such, the respondent no.1 has claimed privilege under Section 9(2) of "PASA" in respect to name and address of said three witnesses. The respondent no.1 has further concluded that resort to enforcement of general law is insufficient to prevent the petitioner from continuing his prejudicial activity which affects and is likely to affect the maintenance of public order, and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner that privilege claimed under Section 9(2) of "PASA" by the detaining authority in respect to three anonymous witnesses is not genuine, and as such, subjective satisfaction reached by the detaining authority has been vitiated and the impugned order is bad in law.

5. On scrutiny of papers, it appears that the petitioner has produced the copies of statements of anonymous witnesses supplied by the detaining authority vide running pages 31 to 35 of the compilation. That the first two statements both dated 8-11-1998 appears to have been verified by the respondent no.1-the detaining authority to claim privilege under Section 9(2) of "PASA". However, the third statement dated 10-11-1998

does not appear to have been verified either by the detaining authority or any authority subordinate to the detaining authority at the instance of the detaining authority. That the said fact contradicts the statement made in the grounds of detention that the detaining authority has verified the said statements. That the said discrepancy also makes the factual statements made in the grounds of detention incorrect and not in consonance with the contemporary record which formed the material for consideration to exercise powers under Section 3(1) of "PASA".

6. That in the matter of Spl.C.A. no.2017/99 decided by this Court on 27-7-1999 and Spl.C.A. no.7655/99 decided on 22-7-1999, the view has been expressed that statement recorded by Sponsoring Authority, if not verified either by the detaining authority or any subordinate authority, at the instance of the detaining authority cannot form part of the material to come to a subjective satisfaction under Section 3(1) of "PASA". Furthermore, in such eventuality if such statement is taken into consideration the subjective satisfaction vitiates and renders the detention order bad in law. That, in the instant case also, the view expressed in the above stated matters squarely apply and there is no denial on behalf of the respondent or any explanation in respect to specific contention raised by the petitioner vide paragraph 3 (D/1) and 3 (D/2) of the grounds. The affidavit-in-reply filed by the respondent no.1 dated 27th July, 1991 is devoid of any such explanation for non verification or non consideration of the statement of witnesses. As a matter of fact, the record does not disclose that after the amendment carried out by the petitioner on 29-9-1999 to insert grounds (D/1) and (D/2), any affidavit-in-reply has been filed. Learned A.G.P. Mr. Samir Dave could not tender any explanation in the absence of affidavit. Hence, I am constrained to hold that on account of non verification and non consideration of the statement of witnesses for whom the privilege is claimed under Section 9(2) of "PASA" by the detaining authority, the impugned order of detention has vitiated the subjective satisfaction rendering the order invalid.

7. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 15-12-1998 passed by the respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Mohammad Elias Abdulmiya Shaikh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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